

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LUIS APONTE and JENNIFER SELF,

Plaintiffs,

v.

MASON COUNTY FIRE PROTECTION
DISTRICT NO 16,

Defendant.

CASE NO. 3:21-cv-05459-DGE

ORDER DENYING PLAINTIFFS'
MOTION FOR ORDER WAIVING
ALL DEFENDANT'S
OBJECTIONS TO PLAINTIFFS'
SECOND SET OF DISCOVERY
REQUESTS (DKT. NO. 33)

I INTRODUCTION

This matter comes before the Court on Plaintiffs' Motion for an Order Waiving all Defendant's Objections to Plaintiffs second set of discovery requests. (Dkt. No. 33.) Having reviewed the motion, all supporting materials, and relevant portions of the record, the Court DENIES Plaintiff's motion.

II BACKGROUND

This dispute concerns Plaintiffs' second set of discovery requests. In her declaration, Plaintiffs' counsel Vera P. Fomina Iso stated, "Plaintiffs' attorneys served Plaintiffs' Second Set

1 of Interrogatories and Requests for Production on Defendant on June 7, 2022.” (Dkt. No. 34 at
2 1.) Yet a copy of the email correspondence from Plaintiffs’ counsel to Defendant’s counsel
3 shows the discovery requests were sent June 8, 2022. (*Id.* at 2.) Accordingly, it appears
4 Defendant’s responses were due July 8, 2022. *See* Fed. R. Civ. P. 6(a)(1).

5 Notwithstanding this discrepancy, Plaintiffs and Defendant appear to agree Defendant’s
6 responses were due July 7, 2022. (*See* Dkt. Nos. 33 at 2; 37-1 at 1.) In his declaration,
7 Defendant’s counsel Erik Connell stated, “Defendant’s responses to Plaintiffs’ second set of
8 discovery were mis-calendared in my office as July 8, 2022, as opposed to the correct date of
9 July 7, 2022.” (Dkt. No. 37-1 at 1.)

10 On July 7, 2022, Plaintiffs’ counsel emailed Defendant stating, “[a]s you are aware, on
11 June 7, 2022, we served your office with Plaintiffs’ second set of discovery requests” but “we
12 have not received any response from you” and “[a]s such, you have waived any objections to the
13 requests.” (Dkt. No. 34 at 8.) On July 8, 2022, Defendant’s counsel responded requesting a two-
14 week extension for its discovery responses. (*Id.*) Later that day, Plaintiffs’ counsel replied
15 stating they would agree to the requested two-week extension if Defendant agreed to
16 “rescheduling all depositions for at least five days after the date when [Defendant] produce[d]
17 the documents;” Defendant “covers the cost of reserving the subpoenas that have been sent to
18 date;” and Defendant agrees “to a stipulated extension of all trial deadlines to allow [Plaintiffs]
19 time to complete discovery and to filed discovery-related motions.” (*Id.* at 7.)

20 Plaintiffs and Defendant’s counsel conferred via phone on July 12, 2022 and agreed to
21 extend the discovery deadline until July 21, 2022. Following the conference, on July 12, 2022,
22 Plaintiffs’ counsel emailed Defendant’s counsel stating, “[a]s per our conversation, you agreed
23 that you failed to produce the documents by the deadline, as such, you waived all of your client’s
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1 objections.” (Dkt. No. 34 at 10.) The same day, Defense counsel responded “[a]t no point in our
2 conversation today did waiving objections come up,” and there was no agreement as to
3 objections. (*Id.*) Around two weeks later, Plaintiffs’ counsel replied, “the waiver of objections
4 issue is a point of contention” and will be discussed at the upcoming discovery conference.¹ (*Id.*)
5 Plaintiff filed this motion asking the Court to order all of Defendant’s objections waived on
6 August 4, 2022. (Dkt. No. 33.)

7 III DISCUSSION

8 Without an agreed extension or good cause, a party waives its objections to discovery
9 requests. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir.
10 1992) (“It is well established that a failure to object to discovery requests within the time
11 required constitutes a waiver of any objection.”); *see also Davis v. Fendler*, 650 F.2d 1154, 1160
12 (9th Cir. 1981) (“Generally, in the absence of an extension of time or good cause, the failure to
13 object to interrogatories within the time fixed by Rule 33 [] constitutes a waiver of any
14 objection.”).

15 A. Plaintiffs’ Motion for an Order Waiving all of Defendant’s Objections

16 Plaintiffs argue “Defendant failed to respond to Plaintiff’s second set of Interrogatories
17 and Requests for Production within 30 days and have not even attempted to provide a good cause
18 or excuse for this failure,” and therefore, Defendant’s objections are waived. (Dkt. No. 33 at 4.)
19 In response, Defendant argues Plaintiffs have not supported their “nonsensical” theory that a
20 party “can grant a discovery extension as to responses but withhold an extension as to
21 objections.” (Dkt. No. 37 at 5.)

22
23 ¹ No subsequent discovery conference appears to have occurred. It may be, however, that
24 Plaintiffs’ counsel was referring to the discovery status hearing conducted on July 15, 2022.

1 The Court finds the email exchange between Plaintiffs and Defendant's counsel does not
 2 prove the agreed extension precluded extending Defendant's time to submit objections. It
 3 appears Plaintiffs first emailed Defendant about missing the deadline to respond and waiving
 4 objections, but then, during the July 12, 2022 conference, agreed to extend the discovery
 5 deadline until July 21, 2022. At that time, it does not appear there was a clear discussion about
 6 waiver, and therefore, Plaintiffs' after-the-fact assertion of waiver is insufficient for the Court to
 7 rule in Plaintiffs' favor.² Thus, the Court DENIES Plaintiff's Motion for an Order Waiving all of
 8 Defendant's Objections to Plaintiffs' Second Set of Discovery Requests.

9 **B. Defendant's Sur-reply**

10 Defendant asks the Court to strike certain legal arguments made in Plaintiffs' reply under
 11 Local Civil Rule 7(g). (Dkt. No. 41 at 1.) Specifically, Defendant seeks to strike Plaintiffs'
 12 argument that their motion is not abstract and based, in part, on Defendant's failure to fully
 13 respond to Interrogatory No. 18, as well as Requests for Production 40, 41, 43, and 44 (*see* Dkt.
 14 No. 39 at 2–3). (Dkt. No. 41 at 3) (“Plaintiffs’ Motion presented legal arguments that broadly
 15 assert Defendant failed to respond within the time provided by the federal rules. Plaintiffs’ reply
 16 brief newly asserts specific interrogatories and requests for productions to argue which requests
 17 Defendant allegedly failed to produce.”)

18 Because the Court denies Plaintiffs' Motion for an Order Waiving all of Defendant's
 19 Objections to Plaintiffs' Second Set of Discovery Requests, it does not find it necessary to rule
 20 on Defendant's request to strike material from Plaintiffs' reply. Plaintiffs' motion seeks an order


21 ² Because the Court denies Plaintiffs' motion based on the parties' extension agreement, the
 22 Court does not consider Defendant's other arguments against waiver including its claims that
 23 Plaintiffs' argument does not apply to requests for production and privilege cannot be waived.
 (See Dkt. No. 37 at 5–7.)

1 waiving all of Defendant's objections based on its delayed response, not based on the specific
2 merits of any of Defendant's objections. Accordingly, the arguments at issue do not alter the
3 Court's analysis.

4 **IV CONCLUSION**

5 Accordingly, and having considered Plaintiffs' motion, the briefing of the parties, and the
6 remainder of the record, the Court finds and ORDERS that Plaintiffs' Motion for an Order
7 Waiving all of Defendant's Objections to Plaintiffs' Second Set of Discovery Requests is
8 DENIED.

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10 Dated this 14th day of September 2022.

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13 David G. Estudillo
14 United States District Judge
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